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May 12, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Statement**
CC Docket 97-137 and CC Docket 98-121

Dear Ms. Salas:

Please include the attached document in the public record of the above-referenced proceeding. This document sets forth Ameritech's understanding, based on prior Commission decisions, of the prima facie showing required to demonstrate compliance with six of the fourteen checklist items.

Thank you for your attention to this matter.

Sincerely,

Lynn Starr

Attachment

No. of Copies rec'd 0+3
List A B C D E

CHECKLIST OF THE CHECKLIST

- Checklist Item (i): Interconnection
- Checklist Item (ii): Unbundled Network Elements
- Checklist Item (iv): Unbundled Local Loops
- Checklist Item (v): Unbundled Local Transport
- Checklist Item (vi): Unbundled Local Switching
- Checklist Item (xiv): Resale

May 11, 1999

CHECKLIST ITEM (i): INTERCONNECTION

A. General

1. A BOC must provide interconnection "in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i).

2. Section 251(c)(2) requires ILECs to provide CLECs with interconnection "for the transmission and routing of telephone exchange service and exchange access."

3. Such interconnection must be:

   (a) provided "at any technically feasible point within the carrier's network" (§ 251(c)(2)(B));

   (b) "at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the carrier provides interconnection" (§ 251(c)(2)(C)); and

   (c) provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory" (§ 251(c)(2)(D)).

4. The BOC must show it has a binding legal obligation to provide interconnection that meets these criteria. *Second BellSouth Louisiana Order,* ¶ 74.

5. To provide interconnection "at any technically feasible point," the BOC must

   (a) offer *both* physical and virtual collocation as equal options (*e.g.*, a CLEC must be able to get virtual collocation if it wants it, even if there is still space available for physical collocation). *BellSouth South Carolina Order,* ¶ 207.

   (b) also offer interconnection through other means, such as meet-point arrangements. See *First Report and Order,* ¶ 543.

   (c) must provide two-way trunking where technically feasible. *Second BellSouth Louisiana Order*, ¶ 64 (citing 47 C.F.R. § 51.305(f)). (However, there is no requirement to combine "different classes of traffic on the same interconnection trunk groups" unless other parties present "compelling evidence" that doing so is technically feasible. *Id.*, ¶ 79.)

   (d) must provide interconnection at

      (i) the line-side or trunk-side of a local switch

      (ii) trunk interconnection points for tandem switches

      (iii) central office cross-connect points, and

(iv) out-of-band signal transfer points. *Second BellSouth Louisiana Order* ¶ 75.

6. To meet the "equal in quality" requirement, the BOC must

(a) design its interconnection facilities "to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used for [the interoffice trunks] within [the BOC's own network]." *First Report and Order,* ¶ 244.

(b) provide nondiscriminatory installation of interconnection trunks, meaning that the BOC provides trunks to CLECs in the same time frame it provides them to itself. *Second BellSouth Louisiana Order,* ¶¶ 76, 78.

(c) provide the same quality of interconnection to CLECs as to itself. The primary issue here is *trunk blockage*.

If there are trunk blockage problems (*i.e.*, if CLECs experience more incidents of trunk blockage than the BOC, especially during busy hours), the BOC must

(i) explain how it derived its formula for calculating trunk blockage rates (*Second BellSouth Louisiana Order,* ¶ 77 n.216);

(ii) submit all the relevant input data to the FCC as part of the initial application, including:

* information on the actual level of trunk blockage (such as the actual number of trunks blocked in the particular trunk groups, and the size of the trunk groups being blocked),

* the rate of call blockage (the actual percentage of calls blocked), and the actual number/percentage of blocked calls that were not ultimately completed, and

* the percentage of blocked calls re-routed to the CLEC's NXX as opposed to the BOC's NXX (*id.*; *Ameritech Michigan Order,* ¶¶ 233-34, 255); and

(iii) fully explain how the data show that trunk blockage for CLECs is no worse than for the BOC's retail customers, and show the call completion rates for calls originating from Ameritech customers and terminating to (a) Ameritech customers, versus (b) CLEC customers. *Id.* ¶ 235.

(iv) if the data show some disparities, the BOC should "perform statistical analyses" to show whether the disparity "is a result of random variations as opposed to other underlying differences." *Second BellSouth Louisiana Order,* ¶ 77 and n.216.

(v) it does not matter whether the differences in trunk blockage are "service affecting" or not; the issue is whether the interconnection is nondiscriminatory. *Ameritech Michigan Order,* ¶ 241.

(vi) the BOC also should discuss whether it has considered alternate routing possibilities to avoid single points of failure for CLECs, and what procedures it uses to re-route calls. *Ameritech Michigan Order,* ¶¶ 246-53, 255.

(d) "Equal in quality" refers to quality as perceived by CLECs as well as by end-users. *Id.*, ¶ 223; *Second BellSouth Louisiana Order,* ¶ 63.

7. To provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory," a BOC should

(a) ensure that the relevant documents (interconnection agreements or SGAT) specifically define the BOC's obligations; and

(b) presumably, rates would have to be fixed in the relevant document and comply with the FCC's pricing rules.

(c) measures should continue to include installation intervals for new trunk groups; the time required to restore outages; and trunk blockage. *Ameritech Michigan Order*, ¶ 226.

(d) detailed data (such as on blockage) should be submitted on a state-specific basis (as opposed to region-wide), and should separate local and interLATA trunks. *Id.*, ¶ 226 and nn. 615-616.

B. Practical Availability of Collocation Options

1. The interconnection agreement or SGAT must have "definite, concrete and binding terms" for collocation. *Second BellSouth Louisiana Order,* ¶¶ 68-69, 165 and n.551.
   (a) these terms should include specific installation intervals for both

      (i) response to a collocation request, and

      (ii) completion of installation. *Id.*

   (b) if available, the BOC should submit evidence on the actual intervals in which it has responded to request and actually provided collocation. *Id.*

   (c) there should be specific terms for all applicable fees (*e.g.*, space preparation), and the BOC should explain the methodology used to compute such fees for both recurring and non-recurring charges. *Id.* ¶ 73; *BellSouth South Carolina Order*, ¶ 204 ("We find BellSouth's SGAT deficient because its collocation rates do not include any rates for the space preparation fee. That component of cost is left to further negotiation on an individual case basis.")

2. The BOC must show actual commercial use of its collocation offerings or testing evidence to show it is operationally ready to provide collocation upon request. *Second BellSouth Louisiana Order* ¶ 166.

   NOTE: As a result of its Order on Advanced Telecommunications Capability,[1] BOCs will need to provide collocation in the manner required by that Order.

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[1] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. Mar. 31, 1999).

CHECKLIST ITEM (ii): UNBUNDLED NETWORK ELEMENTS

A. General

1. A BOC must provide "nondiscriminatory access to unbundled network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." 47 U.S.C. 271(c)(2)(B)(ii). The key requirements here are:

   (a) nondiscriminatory access (this is often an OSS issue)

   (b) at any technically feasible point

   (c) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory

   NOTE: These requirements apply to all UNEs. Given the Supreme Court's vacatur of Rule 319 in *IUB*, of course, exactly what those UNEs are is uncertain until the FCC completes its remand proceeding. Still, the analysis in past § 271 orders is useful.

B. Enabling CLECs to Combine UNEs

1. The BOC must provide UNEs in a manner that allows CLECs to combine them. 47 U.S.C. 251(c)(3). The BOC must show that it allows such access both as a legal and practical matter. *Second BellSouth Louisiana Order,* ¶ 163.

   (a) "Availability as a legal matter" means the interconnection agreement or SGAT has sufficiently detailed, concrete and binding terms and conditions for physical and virtual collocation or other methods of access for the purpose of combining network elements. *Second BellSouth Louisiana Order,* ¶ 165.

      (i) this includes "definite terms and conditions for recombining network elements." *BellSouth South Carolina Order,* ¶ 197.

      (ii) the agreements or SGAT must specifically identify "which elements will be separated and which will be provided in combination, and how and at what cost." *Id.*

      (iii) a mere offer to negotiate the terms of combinations may not be sufficient. *Id.*

   (b) "Availability as a practical matter" means there is evidence of actual commercial usage of collocation in the relevant state (or other in-region states if the collocation methods are the same). *Second BellSouth Louisiana Order,* ¶ 166. Alternatively, the BOC must present testing evidence to show operational readiness to provide collocation on request. *Id.*

(i) to show operational readiness, the BOC must show that when a CLEC wants to use collocation to combine UNEs, the BOC is able "to accept, coordinate, and deliver orders for various network elements in a rapid and reliable manner for combination by new entrants at unprecedented volumes in order to accommodate widespread competition." *Second BellSouth Louisiana Order,* ¶ 166.

(ii) testing must show that collocation offerings can accommodate both current and projected demand for UNEs and UNE combinations. *Id.*

2. Collocation cannot be the sole method by which a CLEC can access and combine UNEs. The BOC must offer any other "technically feasible" method of access (such as meet-point arrangements). *Second BellSouth Louisiana Order,* ¶¶ 168-70.

3. The prices for collocation must be set in the interconnection agreement or SGAT and must comply with the FCC's rules.

C. Pre-existing UNE Combinations, the UNE Platform, and UNEs Not Currently Combined

1. Under the Supreme Court's *IUB* decision, BOCs must provide CLEC with combinations of UNEs if the combinations already exist in the BOC's network and if the FCC, on remand from *IUB*, requires unbundling of all the elements in the requested combination necessary to make that platform.

2. With regard to pre-existing UNE combinations (whatever those are after the FCC issues a new rule on remand from *IUB*), the BOC will have to show:

(a) a concrete legal obligation to provide such combinations in its agreements or SGAT, including specific recurring and non-recurring charges approved by a State commission (in accord with the FCC's rules) and specific requirements for installation intervals,

(b) an ability to meet present and expected demand for such combinations, shown either by actual performance data or detailed testing. This is largely an OSS issue in terms of ordering, provisioning, and billing. *Ameritech Michigan Order*, ¶¶ 161, 335, 337.

3. **UNE Platform.** A BOC's obligation to provide the UNE platform will of course depend on the FCC's remand from *IUB*. If all the necessary elements are still required to be unbundled (essentially, the loop + switching + shared interoffice

transport), the BOC will have to make the same showing described above for pre-existing combinations.

4. **UNEs Not Currently Combined.** Ameritech's position is that the FCC rules that previously had required it to combine UNEs that were not already combined in its network have been vacated and are no longer valid. Thus, Ameritech is not required to create custom combinations of UNEs (*e.g.*, connecting a loop to interoffice transport).

D. Operation Support Systems (OSS)

(1) General

1. The Commission takes a two-step approach to analyzing OSS.

   (a) The first question is whether the BOC has made its OSS available to requesting carriers — that is, "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *Second BellSouth Louisiana Order*, ¶ 85. This is more of a theoretical analysis, assessing whether CLECs can use the OSS interfaces to perform the same functions as the BOC, in substantially the same time and manner.

   (b) The second step evaluates whether those OSS really work in a nondiscriminatory fashion — in other words, "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter." *Id.* For this analysis, the Commission prefers evidence of actual commercial use, which it deems "[t]he most probative evidence that OSS functions are operationally ready." *Id.* ¶ 86. If a lack of use is the result of CLEC business decisions, and not a lack of practical availability, evidence of OSS testing will be accepted. *Ameritech Michigan Order*, ¶ 138.

(2) Theoretical Availability

1. Assuming the BOC provides at least one interface for each of its OSS functions, the principal issues under the first prong of the FCC's analysis are "integration" and "industry standards."

(a) Integration

1. "Integration" emerged as an issue after BellSouth filed its first § 271 application. The Commission found that BellSouth's pre-ordering and repair and maintenance

interfaces were not "available" because of a lack of "integration." To use pre-ordering as an example, CLECs accessed BellSouth's pre-order system through an interface that is not fully integrated with the ordering systems. Thus, pre-order information did not pass into the ordering systems as it did for BellSouth. Rather, it had to be retyped and resubmitted. In its *BellSouth South Carolina* and *First BellSouth Louisiana* Orders, the Commission found this lack of integration rendered BellSouth's pre-ordering function "unavailable" for purposes of assessing checklist compliance, because manual re-typing of pre-order information results in additional costs, delays, and potential human errors.

2. Due date selection is another integration issue. In the BellSouth proceedings, CLECs argued that BellSouth's OSS were discriminatory because CLECs can obtain only an estimated due date in the pre-ordering phase; they must then input an order and wait for the ordering systems (which, at present, are not integrated with the pre-order interface for CLECs) to accept it. Thus, until the order passes through the interface and is accepted by the Legacy systems, CLECs "cannot be confident that the due date promised to their customers [during the pre-order phase] will be the actual due date that BellSouth assigns to the order when it is processed." *Second BellSouth Louisiana Order*, ¶ 104.

(b) Industry Standards

1. The FCC has thus far refused to set national standards for OSS, or to require BOCs to comply with voluntary standards established by industry groups. *Second BellSouth Louisiana Order*, ¶ 137 ('[C]ompliance with industry standards is not a requirement of providing nondiscriminatory access to OSS functions.").

2. The DOJ appears to expect BOCs to migrate to industry standards and in some cases to initiate development efforts before the standards are finalized. (DOJ South Carolina Eval. at A6 & n.8; A10).

3. In the *Ameritech Michigan Order* (¶ 218), the FCC endorsed industry standards as "the most appropriate solution to meet the needs of a competitive local exchange market." And in the *Second BellSouth Louisiana Order* (¶¶ 136-37), the FCC noted that BellSouth had implemented EDI version 7.0, which "allows competing LECs to order four UNEs on a mechanized basis: (1) unbundled loops; (2) unbundled ports; (3) interim number portability; and (4) loop plus interim number portability" and accordingly "commend[ed] BellSouth for implementing industry standards for ordering of UNEs."

(c) OSS Documentation and Training

1. "BOCs have an affirmative obligation to provide such information and support to competing carriers with all of the information necessary to format and process

their electronic requests so that these requests flow through the interfaces, the transmission links, and into the legacy systems as quickly and efficiently as possible. Such information must include all internal business rules, and ordering codes used by a BOC that competing carriers need to place orders through the system efficiently." *BellSouth South Carolina Order*, ¶ 111.

2. In all three of the BellSouth proceedings, the FCC attributed high rates of order rejection to BellSouth's failure to provide up-to-date information on business rules.

3. In its South Carolina evaluation (A-26), the DOJ also criticized BellSouth for its "lack of change management processes" to notify CLECs in advance of changes that will be made to BellSouth systems.

4. Ameritech should present its affirmative case as to the extent and effectiveness of its OSS documentation, training and change management processes.

(3) Operational Readiness and Performance Measures

1. There are two principal areas of contention with respect to the use of performance measures to demonstrate OSS readiness:

   (a) what aspects of performance are to be measured and reported; and

   (b) how the results should be evaluated.

(a) What to Measure

1. In past orders under § 271, and in particular the *Ameritech Michigan Order* (¶ 212), the FCC has highlighted and defined certain performance measures that it believes essential to a § 271 application. Further, the Commission issued a Notice of Proposed Rulemaking ("NPRM") last April, in which it proposed 30 "model" measurements.

2. Performance data for unbundled network elements should be provided separately from resale. *See Ameritech Michigan Order* (¶ 159) ("in future applications, Ameritech also must be able to demonstrate that it is providing nondiscriminatory access to OSS functions associated with unbundled network elements"). In the *Second BellSouth Louisiana Order* (¶ 144), the FCC reiterated its preference for "evidence that [the BOC] offers ordering functionality for UNEs, including complex directory listings, split accounts, and number portability, that provides an efficient competitor a meaningful opportunity to compete based on reasonably foreseeable demand." Specifically, the applicant should:

(a) "explain clearly the method by which competitive carriers can order UNEs that the competitive LECs plan to combine at cost-based rates under section 252(d)(1)" (¶ 141);

(b) "disaggregate competing LECs' flow-through orders for UNEs placed over the EDI interface" (¶ 138); and

(c) in the absence of commercial usage, submit "end to end testing of its interfaces for UNEs" (¶ 140).

3. In its *Second BellSouth Louisiana Order*, the Commission generally concurred with BellSouth's choice of what to measure and how to measure it. *See Second BellSouth Louisiana Order*, ¶ 92.

(a) As noted above, the FCC advised BellSouth to break out performance data for unbundled network elements, *id.* ¶ 138, and combinations thereof, *id.* ¶ 141.

(b) Likewise, where BellSouth offers more than one interface for a particular function, the FCC stated that BellSouth should present the relevant operating data separately for each interface. *Id.* ¶ 111.

(c) The FCC reiterated that it expects to see performance data on "jeopardy notices." The NPRM contains two tentative measures for jeopardies, but Ameritech has thus far objected to those measures.

(b) How to Evaluate Performance Results

1. The Commission evaluates OSS performance data on one of two criteria.

(a) Where a BOC provides an OSS function to itself that is analogous to the function provided to requesting carriers, that BOC "must offer access to competing carriers that is equivalent to the access the BOC provides itself." *Second BellSouth Louisiana Order*, ¶ 87.

(i) In its *BellSouth South Carolina Order* (¶ 98), the Commission elaborated that "equivalent" access means "that competing carriers are able to perform OSS functions in substantially the same time and manner as the BOC."

(ii) The Commission has specifically found the following OSS functions to have a retail analog. Thus, it will require proof of "equivalent access" for these functions. *See Ameritech Michigan Order*, ¶ 140:

pre-ordering, ordering and provisioning for resale services,
repair and maintenance for both resale services and
unbundled network elements, and
measuring daily customer usage for billing purposes

(b) Where an OSS function does not have a retail analog for comparison, the BOC "must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete." *Id.*

(i) The most prominent examples of OSS functions that do not possess a retail analog are those associated with the ordering and provisioning of unbundled loops, because a BOC does not unbundle its network elements for itself. *See id.; Ameritech Michigan Order* ¶ 141.

(ii) The Commission has not yet determined, however, whether there is a retail analog for ordering and provisioning combinations of network elements. *Ameritech Michigan Order*, ¶ 141 n.344.

2. A Section 271 application should focus on a comprehensive review and analysis of OSS performance statistics.

(a) the analysis should proceed on an interface-by-interface, function-by-function basis,

(b) separate presentations for resale, unbundled network elements, and interconnection should be made,

(c) improvements in OSS data from prior applications should be highlighted,

(d) where potential new problem areas exist, the causes should be identified and either resolved (with corrective measures and their benefits implemented and documented in the application) or shown to be immaterial.

(c) Specific OSS Performance Issues

The following elaborate on specific OSS performance issues addressed by the FCC.

1. **Pre-ordering Issues**

(a) As noted above, the Commission found that BellSouth's pre-ordering interfaces did not provide nondiscriminatory access to due dates, because

they were not integrated with the ordering systems (and thus could not give a firm due date), and because delays in order processing (led to BellSouth's inability to meet the tentative due date selected in the pre-order phase.

(b) In addition, the *BellSouth South Carolina Order* (¶¶ 177-79) faulted BellSouth's practice of placing limits on the quantity of telephone numbers a CLEC could reserve in a central office. As the Commission saw it, "[a] carrier that wants to market its services in a particular area or conduct a large marketing campaign may face a situation where it is no longer able to reserve numbers." *Id.* ¶ 179.

(c) The Commission was also "troubled" by accusations that CLECs had to perform extra address validations during pre-ordering. *BellSouth Carolina Order*, ¶ 175.

(d) Finally, the Commission also expressed concerns over CLEC allegations that BellSouth's LENS pre-order interface "locks up," requiring their representatives to log off and then log back on again. *BellSouth South Carolina Order*, ¶ 180.

2. **Order Rejections.** The overall topic of order rejections comprises three related issues: the rate at which orders are rejected, the speed at which notice of rejection is provided, and the content of the rejection notice.

(a) **Rate of Rejection**

(i) The FCC recognizes that a BOC should not be held responsible "if the quality of work performed by the competing carrier's workforce is, indeed, inferior." *First BellSouth Louisiana Order*, ¶ 29.

(ii) The FCC has found, however, that conclusory statements that rejections are "the CLECs' fault" are insufficient. In its *BellSouth South Carolina Order* (¶ 110), the Commission stated that "[b]ecause BellSouth has not provided information explaining the causes of order errors . . . we cannot make a judgment regarding how many of the errors assigned by BellSouth to the actions of competing carriers result from BellSouth's failure to provide information, such as business rules, concerning how BellSouth's internal systems process orders."

(iii) Thus, Ameritech should (as it has done with prior applications) analyze the overall rates of rejection, carve them into their constituent causes, and provide explanations to show: how those causes have been eliminated, why they are attributable to CLECs and beyond Ameritech's control, and/or why they do not materially affect OSS performance.

(b) **Speed of Rejection Notices**

(i) In the BellSouth proceedings, CLECs complained, and the FCC agreed, that prompt notification is necessary. The Commission found that manual provision of order rejection notices failed to meet the requirement of nondiscriminatory access. *BellSouth South Carolina Order*, ¶ 120; *First BellSouth Louisiana Order*, ¶ 33-34.

(ii) The Commission also expressed concerns with respect to timeliness of rejection notices in its *Ameritech Michigan Order*, ¶ 188.

(iii) In its Second Louisiana application, BellSouth stated that it had implemented electronic rejection notices for more than 300 error messages. *Second BellSouth Louisiana Order*, ¶ 118.

(c) **Content of Rejection Notices**

(i) The Commission found that BellSouth's manual rejection notices were non-equivalent to retail, not only because they took more time to reach the CLEC, but also because they "do not contain codes that clearly identify the errors, which requires competing carriers to take time either to interpret the notice or to contact BellSouth." *First BellSouth Louisiana Order*, ¶ 34.

(ii) Ameritech should demonstrate its use of electronic rejection notices, and show that any manual notices employ the same codes as their electronic counterparts.

3. **Manual Intervention and "Flow-through."** The FCC has acknowledged that "there may be limited instances in which manual processing is appropriate." *Second BellSouth Louisiana Order*, ¶ 110. Nevertheless, it has also found "that excessive reliance on manual processing, especially for routine transactions, impedes the BOC's ability to provide equivalent access." *Id.*

(a) In this regard, the FCC "would find persuasive evidence showing that the flow-through rates for competing carriers' orders for resale services at

reasonably foreseeable demand levels will be substantially the same as the flow-through rates for BellSouth's retail orders." *Id.* ¶ 115.

(b) "In the absence of such evidence, [the BOC] has the burden of showing why its ordering systems for competing carriers nonetheless meet the nondiscriminatory standard." *Id.*

(c) Manual processing of "split account" orders should be addressed. In the *Ameritech Michigan Order* (¶ 179), the Commission "question[ed] Ameritech's continued reliance on manual processing for these types of orders." The Commission also misread Ameritech's commitment to reduce manual processing of split account orders, thinking that Ameritech had agreed to eliminate manual processing entirely. *See id.* Ameritech must clarify its prior statements while showing progress in this area.

4. **Firm Order Confirmations.** The FCC has observed that "[t]imely return of a FOC notice is critical because it informs the competing carrier of the status of its order." *Second BellSouth Louisiana Order*, ¶ 120. The FCC relied, in part, on lengthy FOC intervals in denying Ameritech's Michigan application, and BellSouth's South Carolina and First Louisiana applications. *BellSouth South Carolina Order*, ¶¶ 122-125; *First Louisiana BellSouth Order*, ¶ 38; *Ameritech Michigan Order*, ¶¶ 186-87.

5. **Order Jeopardy Notices**. The FCC deems it "critical that a BOC provide a competing carrier with timely notice if the BOC, for any reason, can no longer meet the scheduled due date, so that the competing carrier can inform its customer of the delay before it occurs and reschedule the time for service installation." *First BellSouth Louisiana Order*, ¶ 32.

(a) In its *First BellSouth Louisiana* and *BellSouth South Carolina* orders, the Commission found that BellSouth failed to provide nondiscriminatory access to OSS because it failed to provide order jeopardy notices only for delays caused by BellSouth. (BellSouth had provided jeopardy notices only for delays caused by the customer or the CLEC.)

(b) In its second Louisiana application, BellSouth showed that it issued jeopardy notices by fax or by telephone, using a computer-generated list of jeopardies. The FCC was "pleased" with this improvement, but found that BellSouth's performance data (one month) was insufficient to determine whether notification was being provided in a nondiscriminatory manner.

(c) Ameritech provides this function but has thus far objected to performance measures for jeopardy notices.

6. **Average Installation Intervals.** In the *Second BellSouth Louisiana Order*, ¶ 126, the FCC observed that "BellSouth provides service to competing carriers'

customers in twice the amount of time that it provides service to its retail customers." (¶ 126). It concluded: "This is not equivalent access." *Id.*

7. **Modified Due Dates.** The Commission agrees that "it may be necessary for Ameritech to modify due dates when the dates requested by competing carriers are for some reason invalid, such as when the date requested has already passed, or when the order requires the dispatch of engineering personnel so that the requested due date cannot be met." *Ameritech Michigan Order*, ¶ 184. It has held, however, that "a continual, consistent trend of significant due date modification [due to Ameritech resource issues] calls into question whether Ameritech is providing nondiscriminatory access to its OSS functions." *Id.* The Commission has also noted that data on average installation intervals might be useful in assessing (and perhaps in downplaying) the impact of due date modification. *Id.* ¶ 185.

8. **Repair and Maintenance**

   (a) The Commission addressed repair and maintenance issues at some length in the BellSouth proceedings. In its *Second BellSouth Louisiana Order*, the Commission held that none of BellSouth's three repair interfaces satisfied the requirement of nondiscriminatory access.

   (b) First, the Commission held that BellSouth's own legacy TAFI system (the interface chosen by most CLECs) was insufficient, because it "cannot be used for all types of services" (*e.g.*, TAFI cannot be used for unbundled loops, switching, transport or dark fiber), thus requiring CLECs to build a second interface for other service types. In addition, the Commission observed that TAFI is a proprietary interface that CLECs cannot integrate into their own systems, although it held that non-integration did not itself constitute discrimination. *Second BellSouth Louisiana Order*, ¶¶ 149-52.

   (c) Next, the Commission found BellSouth's T1/M1 (EC-CPM) interface to be similarly insufficient. The Commission observed that T1/M1 "provides no flow through into BellSouth's legacy repair and maintenance systems" and that "trouble reports for retail services will fall out for manual processing, because this interface can only handle access services." *Id.* ¶ 154.

   (d) Finally, the Commission concluded that BellSouth's Electronic Communication Trouble Administration interface (a T1/M1 interface that appears similar to Ameritech's EBTA interface) "does not provide parity to competitors." *Id.* ¶ 157. The Commission explained that CLECs using ECTA cannot correct as many troubles while the customer is on the line, or conduct as many line tests, as BellSouth's retail representatives can with TAFI. *Id.*

9. **Billing**

(a) In its *Second BellSouth Louisiana Order*, the FCC concluded that BellSouth must provide "information on customer usage that competitors request and that is technically feasible to provide." *Id.* ¶ 160. Such information includes usage data for flat rate calls, and for access usage. *Id.*

(b) In its *Ameritech Michigan Order* (¶ 203), the Commission found that "double-billing [due to the "3E" issue] is compelling evidence that Ameritech's OSS . . . is not operationally ready." As a result, it expects Ameritech "to submit evidence in any future application demonstrating that the corrective actions . . . have in fact significantly reduced the number of double-billing incidents." *Id.*

(c) The Commission also "expect[s] to review carefully evidence regarding actual improvements" in the timeliness and accuracy of billing data provided to CLECs. *Ameritech Michigan Order*, ¶ 221. In particular, the Commission expects to see a comparison of the speed with which usage information is provided to retail operations vs. CLECs. *Id.*

(d) OSS Capacity

1. OSS must not only be able to handle current commercial usage, but also to accommodate "reasonably foreseeable" future demand. Thus, a BOC must present evidence of volume testing to show that its electronic systems — and its human resources — can handle reasonably foreseeable demand levels.

2. With respect to "manual capacity," the FCC held that "Ameritech should be able to handle, without receiving advance notice from competing carriers, volumes of orders that fall within its stated capacity." *Ameritech Michigan Order*, ¶ 198.

3. Regarding pre-order capacity, the Commission expressed concerns that BellSouth's stated capacity of 15,000 transactions per day regionwide would prove insufficient. *Second BellSouth Louisiana Order*, ¶ 181. It did not find BellSouth's capacity inadequate, stating only that it "encourage[d] BellSouth to continue working with competing carriers to ensure that LENS has adequate capacity," *id.*

CHECKLIST ITEM (iv): UNBUNDLED LOCAL LOOPS

1. The BOC should offer each of the different types of loops defined by the FCC. *See* 47 C.F.R. 51.319(a). (The types of loops required may change on remand from *IUB*.) The types of loops previously required by the FCC were:

   (a) two-wire and four-wire analog voice-grade loops

   (b) two-wire and four-wire loops conditioned to transmit digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals. *Second BellSouth Louisiana Order*, ¶ 184; *First Report and Order*, ¶ 380.

2. The BOC must provide access to any functionality of the loop unless technically infeasible. The BOC must be willing to condition loops in order to provide such functionality. *Second BellSouth Louisiana Order,* ¶ 187.

3. The BOC must provide access to loops regardless of whether it uses IDLC technology or similar remote concentration devices for the particular loop being requested. *Second BellSouth Louisiana Order*, ¶ 187.

4. At the central office, the BOC must cross-connect loops to the CLEC's collocated equipment. *Second BellSouth Louisiana Order,* ¶ 188.

5. To provide loops on a "nondiscriminatory basis," the BOC must show that:

   (a) the unbundled loops are "of the same quality" as the loops the BOC uses for retail service;

   (b) the loops are provided "in a timely and efficient manner" (which largely depends on the BOC's OSS). In other words, the provisioning and ordering of loops must be efficient enough to give efficient CLECs a meaningful opportunity to compete. *BellSouth Second Louisiana Order,* ¶ 192.

      BellSouth failed to satisfy this item in its second Louisiana application because of lack of detail in its evidentiary presentation. The Commission indicated that the following would have been helpful:

      (i) BOCs should provide disaggregated data on loop provisioning alone, not data on all UNEs in general. *Id.*, ¶¶ 195-96.

      (ii) the disaggregated data should show performance on loops provided with or without number portability. *Id.*, ¶ 197. It is important for the BOC to prove its ability to complete timely cutovers with long-term number portability.

(iii) the BOC must "explain how it derives and calculates its data on loop provisioning and why its performance data demonstrates that competitive LECs have nondiscriminatory access to unbundled local loops." *Id.*, ¶ 198.

(iv) the performance data should reflect "the time interval for providing unbundled loops and whether due dates are met." *Id.*, ¶ 186.

(v) the BOC should "identify any performance standards that have been adopted by the relevant state commission or agreed upon by the parties to an interconnection agreement to serve as a basis for comparing [the BOC's] provisioning intervals." *Id.*, ¶ 198.

(vi) the data should include both the time to provision the loop (*e.g.*, 7-10 days) and the time to perform the loop cutover (*e.g.*, approximately 5 minutes). *Id.*, ¶¶ 196-97.

(vii) loops must be provided to end-users "with a minimum of service disruption" (*e.g.*, the BOC meets the required loop cutover intervals).

(A) cutovers must occur in a "timely and reliable fashion" that will satisfy "reasonably foreseeable demand." *Id.*, ¶¶ 185, 192

(B) the BOC may need to submit a detailed loop cutover study to make its case. The study should explain its methodology and assumptions. *Id.*, ¶¶ 194, 197.

(viii) the BOC must be able to provision any reasonably foreseeable volumes of demand for loops. *Id.*, ¶¶ 192, 199.

NOTE: Of course, the Supreme Court recently vacated FCC Rule 319 in its entirety, including the unbundled local loop requirement of Rule 319(d). On remand from *IUB*, the FCC will reconsider whether loops satisfy the Section 251(d)(2) "necessary and impair" standard. To the extent unbundled local loops are not a required network element, they will be made available at market-based prices, terms and conditions.

CHECKLIST ITEM (v): UNBUNDLED LOCAL TRANSPORT

1. Checklist item (v) requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." Section 271(c)(2)(B)(v).

2. This requirement includes two kinds of interoffice transmission facilities: dedicated transport and shared transport.

   (a) dedicated transport is a specific transmission facility between two specific offices, switches and/or wire centers dedicated exclusively to a specific carrier. With respect to dedicated transport, the BOC must make available

      (i) all technically feasible transmission facilities (*e.g.*, DS1, DS3, Optical Carrier levels) that could be used to provide telecommunications services, and

      (ii) connection of such transport to all types of facilities to the extent technically feasible.

   (b) shared transport, as defined by the *Third Reconsideration Order*, consists of unrestricted and undifferentiated access to and use of the BOC's entire public switched network, including all of the switches and transport facilities and elements that comprise that network. See 47 C.F.R. § 51.319(d)(1). This variant of transport requires the BOC to permit the requesting carrier to share the specific transmission circuits that the BOC uses for its own traffic. For the requesting carrier's traffic to get on to and off of these circuits, that traffic must pass through the same switch trunk ports that the BOC's traffic uses. And to get to and from those trunk ports, the requesting carrier must use the same proprietary routing tables resident in the BOC's switches that the BOC uses. Thus, to obtain this variant of shared transport, the requesting carrier must be able to use the BOC's switching facilities, the proprietary routing tables resident in those facilities, the trunk ports that provide the exits from and entrances to those switches, and the transmission circuits to which those ports are attached. These items must be provided as a pre-existing, preassembled, bundled whole. *See Second BellSouth Louisiana Order*, ¶ 201 n.652 (detailing an ILEC's shared transport obligations under the *Third Reconsideration Order*).

   (c) the purchaser of shared transport must be able to use it provide exchange access service. *Second BellSouth Louisiana Order*, ¶¶ 201 n.652, 208; *Ameritech Michigan Order*, ¶ 330. Thus, Ameritech must at least develop an interim method for estimating terminating usage and allocating access revenues to allow CLECs to collect for access charges.

   NOTE: Of course, the Supreme Court recently vacated FCC Rule 319 in its entirety, including the interoffice transport requirement of Rule 319(d). On

remand from *IUB*, the FCC will reconsider whether shared transport — either the *Third Reconsideration Order* variant or some other variant — satisfies the Section 251(d)(2) "necessary and impair" standard. To the extent unbundled local transport is not a required network element, it will be made available at market-based prices, terms and conditions.

CHECKLIST ITEM (vi): UNBUNDLED LOCAL SWITCHING

1. Checklist item (vi) and the *First Report and Order* require BOCs to provide competing carriers with "[l]ocal switching unbundled from transport, local loop transmission, or other services." 47 U.S.C. § 271(c)(2)(B)(vi); see also 47 C.F.R. § 51.319(c) (vacated). Prior to *IUB*, the Commission defined ULS — and thus the checklist requirement — to include the following:

   (a) line-side ports (where local loops connect to the switch). *Id.*, ¶ 212.

   (b) trunk-side ports (where transport facilities from other switches connect to the switch). *Id.*, ¶¶ 213-14.

   (c) all of the "features, functions, and capabilities" of the switch. *Second BellSouth Louisiana Order*, ¶ 207, 215-20. These "features, functions, and capabilities" include all basic switching capabilities of the switch as well as all vertical features (*e.g.*, 3-way calling, caller ID) that the switch is capable of providing.

   (d) any technically feasible customized routing functions. "Customized routing" allows a competing carrier that leases an unbundled local switch to designate which outgoing (trunk-side) trunks will be used to carry certain types of calls from the competing carrier's customers. *Id.*, ¶ 221.

      (i) this can be provided via line class codes, on an interim basis, with an AIN method as a long-term solution. *Id.*, ¶¶ 221-23.

      (ii) of course, the BOC must prove that CLECs are able to order customized routing efficiently (*i.e.*, in a timely manner and at volumes reflecting reasonably foreseeable demand). *Id.*, ¶¶ 223-25. For example, while the CLEC must tell the BOC how to route the CLEC's customers' calls, the BOC cannot require the CLEC to provide the actual line class codes, which may differ from switch to switch, if the BOC is capable of accepting a single code region-wide. *Id.*, ¶ 224.

      (iii) the BOC also should minimize any manual processing of customized routing orders. *Id.*, ¶ 225.

   (e) the BOC must provide ULS "in a manner that permits the competing carrier to offer, and bill for" both (i) exchange access and (ii) the termination of local traffic (referred to as reciprocal compensation, see Checklist Item 13). *Id.*, ¶ 208. In other words, the BOC must provide the CLEC with daily data regarding the long distance and local calls made to and from the CLEC's customers so that the CLEC can bill interexchange carriers for originating and terminating access charges and can bill other LECs reciprocal compensation for terminating their local traffic through

"its" unbundled switch. (Ameritech has proposed an alternative approach which it refers to as "originating carrier pays.")

(f) a BOC also must make its trunk ports available on a "shared" basis, and give competitors access to the switch's routing tables. This is necessary in order for the BOC to provide competitors with shared transport, as required by Checklist Item 5 (a requirement that obviously could change on remand from *IUB*).

2. The BOC also should provide unbundled tandem switching, including access to all the functionalities of its tandem switches. *Second BellSouth Louisiana Order*, ¶ 229 and n.752. Prior to *IUB*, FCC Rule 319 defined unbundled tandem switching to include:

(a) trunk-connect facilities, including but not limited to the connection between trunk termination as a cross-connect panel and a switch trunk card;

(b) the base switching function of connecting trunks to trunks; and

(c) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features. *Id.*; 47 C.F.R. § 51.319(c)(2).

NOTE: Of course, the Supreme Court recently vacated FCC Rule 319 in its entirety, including the unbundled local switching requirement of Rule 319(c). On remand from *IUB*, the FCC will reconsider whether — and, if so, to what extent — unbundled local switching satisfies the Section 251(d)(2) "necessary and impair" standard. To the extent unbundled local switching is not a required network element, it will be made available at market-based prices, terms and conditions.

CHECKLIST ITEM (xiv): RESALE

1. BOCs must make their telecommunications services "available for resale in accordance with the requirements of Section 251(c)(4) and 252(d)(3)." 47 U.S.C. 271(c)(2)(B)(xiv). Information services, such as voice mail and other messaging services, are not subject to resale because they are not "telecommunications services." *Second BellSouth Louisiana Order*, ¶ 214.

2. Under Section 251(c)(4), a BOC must

   (a) offer for resale at wholesale rates any telecommunications services that the BOC provide to subscribers other than telecommunications carriers.

   (b) not impose any unreasonable or discriminatory conditions or limitations on resale (*e.g.*, the BOC cannot prohibit resale of customer-specific contract arrangement at wholesale rates, *First BellSouth Louisiana Order* ¶¶ 64-70).

3. The BOCs OSS for resale services must be operational and nondiscriminatory to satisfy this checklist item. *See Second BellSouth Louisiana Order* ¶ 309.

4. Resale of Contract Service Arrangements (CSAs). CSAs are essentially contractual arrangements with a specific high-volume customer that are tailored to that customer's needs (even though the same service is separately available under tariff). They usually include volume and term requirements, special service arrangements, customized telecommunications service arrangements, and master service agreements. *Second BellSouth Louisiana Order*, ¶ 307 n.974; *First BellSouth Louisiana Order*, ¶ 59 n.211.

   (a) the wholesale discount for CSAs need not be the same as for retail services. Rather, the State commission could establish a separate discount based on the costs avoided when offering CSAs at wholesale. *First BellSouth Louisiana Order*, ¶ 66.

   (b) while states can set a separate wholesale discount rate for CSAs, that rate cannot be 0%, since that would "wholly invalidate [the] resale pricing obligation." *First BellSouth Louisiana Order*, ¶ 70. However, it also appears that the state commission can leave the specific discount for CSAs to be determined on a case-by-case basis, provided that all such discounts are required to be in conformance with Section 251(c)(4) of TA96. *See Second BellSouth Louisiana Order*, ¶ 313.

   (c) to date, the FCC has not addressed unique customer-specific arrangements. Ameritech believes that such arrangements are not "telecommunications services" and, thus, outside the scope of Section 251(c)(4).

5. Resale conditions and limitations.

(a) **Similarly Situated.** For CSAs, the Commission indicates that the BOC can limit resale by the CLEC to customers who are "similarly situated" to the customer with the original CSA, since such a restriction is "reasonable and non-discriminatory" and "sufficiently narrowly tailored." State commission will decide whether a customer is "similarly situated." *Id.*, ¶ 316.

(b) **Aggregation.** CLECs can aggregate multiple customers to take advantage of reselling a CSA, but only if the group of customers "constitute an aggregation that is similarly situated to the original CSA customer" (a factual determination for the state commission). *Id.*, ¶ 317. A BOC rule simply forbidding aggregation, without economic justification, is presumptively unreasonable. Economic justification might exist, for example, for a geographic limitation of the location of lines, where location is economically relevant. *Id.* The BOC has the burden of proving that any limits on aggregation are reasonable and nondiscriminatory. *Id.*

(c) **Customer Change Charges.** A BOC may impose a "change charge" on a reseller when the BOC's customer switches to the reseller -- even though the BOC does not have to pay the reseller a similar charge when the customer switches back to the BOC. The difference is that the BOC still incurs service costs to change billing, etc., when the customer goes to a reseller, but the reseller has no such responsibilities when the customer goes back to the BOC. The BOC also may impose a change directly on the *customer* when he switches back to the BOC. The amount of that charge is left to state commissions. *Id.*, ¶ 318.